

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LAWRENCE S. PEPPER as Personal Representative  
of the ESTATE OF MAJED HAMDALLAH,  
SALEM HAMDALLAH, SHAMMA  
HAMDALLAH,

Plaintiffs-Appellants,

v

SUBURBAN MOBILITY AUTHORITY FOR  
REGIONAL TRANSPORTATION a/k/a SMART,

Defendant-Appellee,

and

WESTIN RENAISSANCE COMPANY, WESTIN  
HOTEL, RENAISSANCE CENTER  
PARTNERSHIP, RENAISSANCE CENTER and  
CITY OF DETROIT,

Defendants.

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Before: Markman, P.J., and McDonald and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted an order denying reconsideration of summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant SMART. We reverse and remand.

On August 21, 1992, near the entrance of the Westin Hotel, Majed Hamdallah died from injuries sustained when he was struck by a SMART bus. Decedent was crossing Renaissance Drive West from the hotel to his taxi, which was parked across the street, when the accident occurred. At the time of the accident there was a bus parked in front of the hotel. Decedent was struck by the SMART bus while entering the street in front of the parked bus. Plaintiffs filed suit against multiple defendants

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including SMART following the accident. Plaintiffs' claim against SMART is that the bus was operated negligently when it struck decedent. Specifically, they claim that the SMART bus was traveling above the posted speed limit of fifteen miles per hour. The trial court granted SMART's motion for summary disposition, ruling that there were no genuine issues of material fact and that SMART was entitled to judgment as a matter of law because plaintiffs failed to produce evidence that the bus was operated negligently.

On appeal, plaintiffs contend that the trial court erred in granting summary disposition because plaintiffs submitted evidence from which an inference could be drawn that the bus was exceeding the speed limit or otherwise operating negligently. A trial court's grant or denial of summary disposition is reviewed de novo on appeal. *Pickney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). This Court reviews the record in the same manner as the trial court to determine if the movant is entitled to judgment as a matter of law. *Philips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995). A motion for summary disposition pursuant to MCR 2.116(C)(10) may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Once SMART supported its motion for summary disposition with deposition testimony from several witnesses who indicated that the bus was not speeding or driving erratically, the burden shifted to plaintiffs to show by evidentiary materials that a genuine issue of disputed fact existed regarding whether the bus was being operated negligently at the time decedent was struck by the bus. See *Skinner v Square D Co*, 445 Mich 153, 160-161; 516 NW2d 475 (1994). The existence of a disputed fact must be established by admissible evidence. *Cox v Dearborn Hts*, 210 Mich App 389, 398; 534 NW2d 135 (1995).

Here, plaintiff presented the testimony of Anwar Krajah who testified that he saw the bus come around the corner and, although he did not watch the bus the entire time that it traveled from the corner to the front of the hotel where the accident occurred, he saw how fast the bus was traveling initially and estimated the speed to be twenty-five to thirty miles per hour. The trial court discounted this testimony based on its conclusion that Krajah contradicted himself mid-sentence. A review of Krajah's testimony, however, indicates that while he conceded that he did not know the *exact* speed of the bus, he did not contradict his assertion that the bus was traveling twenty-five to thirty miles per hour. Accordingly, the trial court erred in finding that Krajah contradicted himself. The reliability of Krajah's testimony that the bus was traveling at an excessive speed turns on Krajah's ability to assess the speed of the bus and on his credibility as a witness. Similarly, the timeliness-- or untimeliness-- of his statement to authorities would weigh only on his credibility as a witness. A trial court may not make findings of fact or weigh credibility in deciding a summary disposition motion. *Skinner, supra* at 161. A trial court is to draw all legitimate inferences in favor of the non-movant. *Id.* at 162. Therefore, Krajah's testimony raises a genuine issue of material fact. The trial court accordingly erred in granting SMART's motion for summary disposition.

For these reasons, we reverse the trial court's order granting SMART's motion for summary disposition and remand for further proceedings.

/s/ Stephen J. Markman

/s/ Gary R. McDonald

/s/ Mark J. Cavanagh